

SENATE BILL 772

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CF 0lr3701

By: **Senator Patterson**

Introduced and read first time: February 3, 2020

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement – Small Business Reserve Program**

3 FOR the purpose of increasing the minimum percentage of a unit's total dollar value of
4 contracts that is, to the extent practicable, to be made directly to small businesses;
5 providing that certain preferences do not apply to certain procurement contracts;
6 requiring a certain unit to apply a certain percentage price preference on certain
7 procurement contracts under certain circumstances; providing for the application of
8 this Act; defining certain terms; and generally relating to the Small Business
9 Reserve Program.

10 BY repealing and reenacting, with amendments,
11 Article – State Finance and Procurement
12 Section 14–501, 14–502, and 14–504
13 Annotated Code of Maryland
14 (2015 Replacement Volume and 2019 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
16 That the Laws of Maryland read as follows:

17 **Article – State Finance and Procurement**

18 14–501.

19 (a) In this subtitle the following words have the meanings indicated.

20 (B) “PERCENTAGE PRICE PREFERENCE” MEANS THE PERCENTAGE BY
21 WHICH A RESPONSIVE BID OR OFFER FROM A RESPONSIBLE BIDDER OR OFFEROR
22 THAT IS A RESIDENT SMALL BUSINESS MAY EXCEED THE LOWEST RESPONSIVE BID
23 OR OFFER SUBMITTED BY A RESPONSIBLE BIDDER OR OFFEROR THAT IS A
24 NONRESIDENT SMALL BUSINESS.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(C) (1) “PRINCIPAL OFFICE” MEANS A PRIMARY PLACE OF BUSINESS THAT IS STAFFED ON A REGULAR BASIS TO PROVIDE THE GOODS OR SERVICES THAT ARE REQUESTED BY A UNIT IN A SMALL BUSINESS RESERVE PROCUREMENT.

(2) “PRINCIPAL OFFICE” DOES NOT INCLUDE A SATELLITE OFFICE OR AN OFFICE THAT IS MINIMALLY STAFFED AND IS NOT OPEN ON A REGULAR BASIS TO PROVIDE THE SERVICES THAT ARE REQUESTED BY A UNIT IN A SMALL BUSINESS RESERVE PROCUREMENT.

(D) “RESIDENT SMALL BUSINESS” MEANS A SMALL BUSINESS WHOSE PRINCIPAL OFFICE IS LOCATED IN THE STATE.

~~[(b)]~~ (E) “Small business” means:

(1) a certified minority business enterprise, as defined in § 14–301 of this title, that meets the criteria specified under item (2) of this subsection; or

(2) a business, other than a broker, that meets the following criteria:

(i) the business is independently owned and operated;

(ii) the business is not a subsidiary of another business;

(iii) the business is not dominant in its field of operation; and

(iv) 1. A. the wholesale operations of the business did not employ more than 50 persons in its most recently completed 3 fiscal years;

B. the retail operations of the business did not employ more than 25 persons in its most recently completed 3 fiscal years;

C. the manufacturing operations of the business did not employ more than 100 persons in its most recently completed 3 fiscal years;

D. the service operations of the business did not employ more than 100 persons in its most recently completed 3 fiscal years;

E. the construction operations of the business did not employ more than 50 persons in its most recently completed 3 fiscal years; and

F. the architectural and engineering services of the business did not employ more than 100 persons in its most recently completed 3 fiscal years; or

2. A. the gross sales of the wholesale operations of the business did not exceed an average of \$4,000,000 in its most recently completed 3 fiscal

1 years;

2 B. the gross sales of the retail operations of the business did
3 not exceed an average of \$3,000,000 in its most recently completed 3 fiscal years;

4 C. the gross sales of the manufacturing operations of the
5 business did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal
6 years;

7 D. the gross sales of the service operations of the business did
8 not exceed an average of \$10,000,000 in its most recently completed 3 fiscal years;

9 E. the gross sales of the construction operations of the
10 business did not exceed an average of \$7,000,000 in its most recently completed 3 fiscal
11 years; and

12 F. the gross sales of the architectural and engineering
13 services of the business did not exceed an average of \$4,500,000 in its most recently
14 completed 3 fiscal years.

15 [(c)] (F) “Small business reserve” means those procurements that are limited to
16 responses from small businesses under § 14–502(b) of this subtitle.

17 14–502.

18 (a) Except as provided in subsection (d) of this section, this subtitle applies to all
19 procurements by a unit.

20 (b) This subsection does not apply to procurements subject to Subtitle 1 of this
21 title.

22 (c) To the extent practicable, a unit shall structure its procurement procedures to
23 achieve a minimum of [15%] **25%** of the unit’s total dollar value of goods, supplies, services,
24 maintenance, construction, construction–related services, and architectural and
25 engineering service contracts to be made directly to small businesses.

26 (d) The total dollar value of procurements by a unit does not include the value of
27 contracts to which this section does not apply because of a conflict with federal law.

28 (e) A unit may apply toward the unit’s overall annual Small Business Reserve
29 payment achievement only those payments resulting from a procurement that is
30 designated a Small Business Reserve procurement.

31 (f) The Special Secretary for the Office of Small, Minority, and Women Business
32 Affairs, in consultation with the Attorney General, shall establish standards and guidelines
33 for participation in the Small Business Reserve Program every 5 years.

1 14-504.

2 (a) **THE PROVISIONS OF §§ 14-401 AND 14-401.1 OF THIS TITLE DO NOT**
3 **APPLY TO A PROCUREMENT DESIGNATED FOR THE SMALL BUSINESS RESERVE**
4 **UNDER THIS SECTION.**

5 (B) Any procurement by a unit of goods, supplies, services, maintenance,
6 construction, construction-related services, architectural services, and engineering
7 services shall be eligible for designation for the small business reserve.

8 [(b)] (C) A solicitation for procurement that has been designated for a small
9 business reserve shall be published in the same manner as required for an invitation for
10 bids as set forth in § 13-103(c) of this article.

11 [(c)] (D) The procurement officer of a unit shall, **SUBJECT TO SUBSECTION (E)**
12 **OF THIS SECTION**, award a procurement contract designated for a small business reserve
13 to the small business that submits a responsive bid that:

14 (1) is the lowest bid price;

15 (2) if the invitation for bids so provides, is the lowest evaluated bid price;
16 or

17 (3) is the bid or proposal most favorable to the State within the small
18 business reserve.

19 (E) **A UNIT SHALL APPLY A PERCENTAGE PRICE PREFERENCE OF 5% TO**
20 **RESIDENT SMALL BUSINESSES ON PROCUREMENT CONTRACTS DESIGNATED FOR**
21 **THE SMALL BUSINESS RESERVE, PROVIDED THAT:**

22 (1) **IF SUBSECTION (D)(3) OF THIS SECTION IS THE BASIS FOR AWARD,**
23 **THE BID OR OFFER SUBMITTED BY THE RESIDENT SMALL BUSINESS IS DETERMINED**
24 **TO BE THE BID OR PROPOSAL MOST FAVORABLE TO THE STATE WITHIN THE SMALL**
25 **BUSINESS RESERVE; AND**

26 (2) **THE PREFERENCE DOES NOT CONFLICT WITH A FEDERAL LAW OR**
27 **GRANT AFFECTING THE PROCUREMENT CONTRACT.**

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
29 apply only prospectively and may not be applied or interpreted to have any effect on or
30 application to any procurement under the Small Business Reserve Program advertised to
31 the public before the effective date of this Act.

32 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2020.

